Brown City Casting Company d/b/a Yale Industries *and* Local 339, International Brotherhood of Teamsters, AFL–CIO, Petitioner. Case 7–RC–21004

October 28, 1997

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections regarding an election held March 7, 1997, and the hearing officer's report recommending disposition of them (pertinent parts are attached as an appendix). The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots showed 43 for and 58 against the Petitioner with 5 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions[1] and briefs and has adopted the hearing officer's findings[2] and recommendations, and finds that the election must be set aside and a new election held.

In Objection 1, the Petitioner alleged, inter alia, that at an open house pizza party held at a local bowling alley on March 5, 1997,[3] the Employer engaged in objectionable conduct when it announced changes in employees' health insurance benefits just 2 days before the scheduled March 7 election. The Employer argues that the announcement at the open house was consistent with its past practice and was the culmination of events that preceded the filing of the petition on January 27. The Employer asserts that the timing of its announcement had nothing to do with the upcoming election. In this regard, according to the Employer, its decision to begin implementation of the new health insurance plan on April 1 required that the announcement be made before the election. The hearing officer found, however, that the Employer failed to rebut the inference that the announcement of improved insurance benefits, which took place practically on the eve of the election, was objectionable. For the reasons set forth below, we agree with the hearing officer.

In mid-December 1996, the Employer contracted with Vincam Human Resources to provide human resource management, benefits, and other services for its employees at its Yale, Michigan facility. Elaine Kenny, a Vincam representative, conducted orientation meetings in December 1996 in the Employer's lunchroom with employees during their break periods or at other times designated by their supervisors. At that time, employees were required to fill out various paperwork for Vincam and were notified about changes in their benefits. Regarding health insurance, Kenny told employees that these benefits were still under negotiation and that she would speak to them again when additional information became available. Kenny did not indicate any date for her future discussion.

Initially, the Employer wanted to discontinue its existing health insurance plan and have Vincam's health insurance plan take effect March 1.[4] However, the Employer was not satisfied with the insurance plan proposed by Vincam in December 1996. As a result, during January and February, Vincam submitted several other proposals for the Employer to review. Finally, on February 25, the Employer concluded its negotiations with Vincam and decided on the Blue Cross/Blue Shield insurance plan known as Community Blue PPO. This plan provided improved benefits to employees at lower costs, including a monthly premium savings of $4000 to $5000 for the Employer. Apparently, the Employer then targeted April 1 for the implementation of these new insurance benefits.[5] The plan was implemented on April 1.

On February 25, the Employer decided to have an open house for employees and their families on March 5 at the nearby bowling alley to announce the new, improved health insurance benefits and to begin the enrollment process. This was the first time that the Employer had ever held a party of this kind for employees to announce new benefits.[6] The arrangements

[1] In the absence of exceptions, we pro forma adopt the hearing officer's recommendation to overrule the Petitioner's Objection 2. Although the Petitioner does not disagree with the hearing officer's ultimate recommendations pertaining to its Objection 1, it filed exceptions to ''preserve the record, point out additional grounds to support the ultimate conclusion, and provide its position concerning the legal and factual issues involved'' in the event that the Employer excepted to the hearing officer's report. Because we agree with the hearing officer to set aside the election on the basis of the Petitioner's Objection 1, we find it unnecessary to pass on the Petitioner's exceptions.

[2] However, we do not rely on the hearing officer's analysis to the extent that he compared the ''actual and intrinsic value of the election'' to the Employer's monthly insurance cost savings and characterized the Employer's actions as ''penny-wise and pound foolish.''

[3] All dates are in 1997 unless otherwise indicated.

[4] In the past, the Employer has made changes in its employees' insurance benefits annually or semiannually in the month of March. In addition, the Employer's arrangement with its current health insurance provider was due to expire March 1, but the Employer could continue that plan thereafter on a monthly basis.

[5] By letter dated February 27, the employees received notice that the Employer's ''target date for implementation of this new [insurance] program [was] April 1, 1997.'' However, Kenny, an Employer witness, testified that she was first made aware of the April 1 implementation date at the March 5 open house itself. Thus, as more fully described infra, the arrangements for the open house, including the selection of the March 5 date were made by Kenny on behalf of the Employer without any connection to an April 1 implementation date for the new plan. In view of our disposition of the case, we find it unnecessary to pass on whether the implementation was accelerated from May 1 to April 1 as argued by the Petitioner.

[6] So far as the record shows, open houses to which family members were invited had been held only at Christmas and on the single occasion of the Employer's move from Brown City to the plant at Yale. Kenny's testimony also reveals that although Vincam usually conducts benefits orientation meetings for the contracting employer's employees, an open house was a new format for her and Vincam and was the Employer's idea.

for the open house, including the selection of the March 5 date, were made by Kenny. The open house lasted 4 hours, from 1 to 5 p.m. Employee attendance was not mandatory, and employees could stay as long or as short a time as they wanted. Refreshments including pizza and soda pop were served, and a display table was set up with pamphlets and handouts pertaining to other employee benefits currently provided by the Employer.

As they entered the bowling alley that afternoon, employees could pick up new Blue Cross enrollment applications and benefit packets that contained information about the new insurance plan. Representatives from the Employer, Vincam, and Blue Cross/Blue Shield were present to answer employee questions and help them fill out the new enrollment applications. Out of the approximately 110 employees eligible for the new insurance, 85 employees turned in their enrollment applications that day. Twenty-five employees did not attend the March 5 open house. By March 10, the Employer supplied to Vincam the needed enrollment information from 20 of those employees. Similar information from the remaining five employees was not submitted to Vincam until March 15.

Before February 25, there was no time schedule or format concerning when or how the Employer would tell employees about the new Blue Cross insurance plan and distribute enrollment applications to them. The Employer explains that the targeted April 1 implementation date for the new health insurance plan dictated that its announcement of the new plan had to be made to the employees prior to the election. The Employer also explains that the open house format was chosen so that the employees could include their family and spouses and so that it could give to, and get more information from, the employees. However, the record does not support these explanations.

Kenny, who was principally involved in the planning and organization of the March 5 event for the Employer, repeatedly testified that the March 5 date for the benefits orientation meeting was chosen because Vincam internally required at least 10 days to 2 weeks to get the necessary information to Blue Cross which, in turn, required an additional 45 days to process new enrollment applications from employees. Likewise, the Employer's office manager, Laurie Hopton, testified that March 5 was selected because of the Blue Cross processing requirements. Yet, Kenny further testified that March 5 was chosen to meet a May 1 implementation date and the selection was not at all connected to an April 1 implementation date. Kenny also testified that March 5 was chosen simply because she and the several others who would participate at the open house were available that day and that date fit their personal schedules.

In addition to these inconsistencies, missing from Kenny's testimony is any suggestion that Blue Cross had requested an announcement by the Employer before the March 7 election so that it could meet an April 1 implementation date. Furthermore, none of the Employer's witnesses adequately explained why the April 1 implementation date could not have been achieved if the announcement to employees had come after the election. If Kenny's testimony about the number of processing days required by Blue Cross and Vincam were to be believed, then even the March 5 announcement date would have been too late to meet the purported required processing periods of 10 to 14 days for Vincam and 45 days for Blue Cross. However, Kenny's testimony that the enrollment applications could not have been processed by April 1 had Vincam waited until after the election to get the applications is not supported by other evidence in the record, which shows that 25 applications submitted by the Employer to Vincam after the election were in fact processed by April 1. We also note that, because the March 5 meeting was not designated as mandatory, the Employer was making no effort to ensure that all the employees would submit their applications on that date rather than later.

Based on the record and in light of the above, we find that the Employer had discretion in choosing when to announce the new Blue Cross insurance plan to employees. We further find that its exercise of that discretion, i.e., its choice of the date and format for the health insurance announcement and signup, was made in February, after the representation petition had been filed, and that the decision to hold an open house for the benefits orientation meeting 2 days before the election was calculated to affect the outcome of that election. See *Speco Corp*., 298 NLRB 439, 443 (1990). Accordingly, we adopt the hearing officer's recommendation to set aside the election based on the Petitioner's Objection 1.

[Direction of Second Election omitted from publication.]

APPENDIX

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

Objection 1

The Petitioner asserts that on March 5, 1997,[3] just 2 days prior to the election, the Employer conducted a meeting with

[3] All dates hereafter are in 1997, unless otherwise noted.

bargaining unit employees in which literature was distributed concerning a new and better health insurance plan that was being made available to these employees. As a result, according to the Petitioner, the employees' ability to make a free and uncoerced choice was negatively impacted and the results of the election were influenced substantially in favor of ''No'' (anti-Petitioner) votes. The Employer denies that the meeting on March 5 affected the results of the election and asserts this meeting was in the works for several months prior to the election, including more than a month before the petition in the instant case was filed on January 27. The Employer also argues that the meeting had to be held at that time in order to enable the employees interested in the new coverage to obtain it in a timely manner without an additional delay in the changeover causing the Employer added and unnecessary expense.

The Petitioner presented two witnesses in support of this objection, General Manager of Administration Ken Hopton and employee Anthony Becker. (Hopton was called by the Petitioner pursuant to its subpoena to the Employer's Custodian of Records.) The Employer presented as witnesses employee Barb Peyerk, Office Manager Laurie Hopton, and two representatives of Vincam Human Resources, Inc., Ken Graham and Elaine Kenny.

The testimony of the witnesses, in particular, Ken Hopton, Laurie Hopton, Graham, and Kenny, as well as the Employer's Exhibit 1 and Joint Exhibit 1, establishes that in December 1996, the Employer and Vincam Human Resources, Inc.,[4] executed a contract whereby Vincam was to provide human resource management, benefits, and other services for the employees of the Employer. In fulfillment of the contract, Kenny conducted employee orientations in the lunchroom at the Employer's Yale facility on December 16–18, 1996. Kenny testified that, during those orientations, she informed the employees about the benefits they would receive, but noted that the health insurance was still being negotiated and, the employees were told, she would speak with them again when additional information on it became available.

Ken Hopton testified that it was normal for the Employer to make changes in health insurance coverage in March on an annual or semiannual basis, with the last such change prior to 1997 being in March 1995.

There was undisputed testimony that a benefits orientation meeting was held for employees and their family members on March 5, from approximately 1 to approximately 5 p.m., at the Big K Lanes Bowling Center,[5] which is next door to the Yale facility. The Employer provided free pizza and soda pop to the persons in attendance. Kenny testified that she selected the date, times, and location as well as recommended that refreshments be served.

Kenny testified that, in scheduling the March 5 meeting, she acted in accordance with the wishes of Vincam salesperson Ken Graham, who sought to fulfill the agreement of Vincam to provide lower costing but higher quality health insurance as soon as possible. At the same time, though, on February 25, Kenny herself set the date of March 5 for the benefits orientation meeting. This, she testified, was done based on her coordination of schedules with Sharon Stefan of Vincam, Blue Cross/Blue Shield Representative William Revelry, Laurie Hopton, and the bowling alley. According to Kenny, it had nothing whatsoever to do with the pending election in the instant case.

Indeed, the testimony of Kenny, Ken Graham, Ken Hopton, and Laurie Hopton was consistent insofar as the lack of consideration given by the Employer and Vincam to the election on March 7 when the benefits orientation meeting was scheduled and conducted. That is, the testimony of these employer witnesses established that those involved in making the decision to hold the benefits orientation meeting on March 5 did not take into account the close proximity to the election.

According to Kenny, the key point for her was that Vincam and the Employer were trying to get the new Blue Cross/Blue Shield[6] health insurance implemented as soon as possible. Here, however, a discrepancy appears. On February 25, Kenny learned that the insurance rates had been approved for the Blue Cross insurance plan (Community Blue PPO) which was going to be offered to the employees of the Employer. This lead her to confer with Vincam's human resources manager (Terri Forman) and benefits administrator (Barbara Spoeri), both of whom said that, in light of the benefits orientation meeting being set for March 5, the earliest effective date for the new health insurance would be May 1. This comported with Kenny's earlier testimony that experience had shown it takes 10 days to 2 weeks for Vincam to process information on an employee's application for Blue Cross, and that it then takes 45 days for Blue Cross to process the employee's application. As a result, on February 25, Kenny prepared documents for the March 5 benefits orientation with the idea that May 1 would be the effective date of the implementation of the new health insurance. Yet, just 2 days later, Cecil Konik (the Employer's general manager-production) issued a letter to all of the employees of the Employer (Jt. Exh. 1) announcing the ''Open House'' was to take place on March 5 and that the ''target date for implementation'' was April 1.

In her testimony, Kenny was not at all clear on why the date of implementation of health insurance changed, but thought it was based on Ken Graham's commitment to the Employer to have a date of implementation of March 1. She herself acted pursuant to Graham's request that the implementation date be April 1.

Graham himself testified that going back to the signing of the contract between the Employer and Vincam and even before that, during discussions between their agents in November 1996, it had been agreed that the implementation was to be on March 1. However, according to Graham, since Laurie Hopton was not satisfied with the health care plans Vincam was offering to the Employer, it was necessary for Vincam to find additional possible choices. This led to Vincam offering a Blue Cross Community Blue PPO plan, which proved to be acceptable to Laurie Hopton and the Employer. Graham further testified that, due to the decision to take this plan not being made until February, Vincam and the Employer then began to think in terms of an April 1 rather than a March 1 implementation date. This was not finalized until around February 27, after Vincam had received the new premiums for the Community Blue PPO plan and transmitted

[4] Hereafter referred to as Vincam.

[5] Hereafter referred to as the bowling alley.

[6] Hereafter referred to as Blue Cross.

them to Laurie Hopton, who approved the premiums and the plan.

Laurie Hopton's testimony provided another possible reason for the need to implement the new health insurance plan on April 1 rather than May 1. According to Hopton, in her capacity as office manager she is familiar with the health insurance premiums paid by the Employer under both the prior plan (provided by American Medical Securities) and the new Blue Cross plan (provided through Vincam's VinCare). Hopton testified that the new plan costs the Employer $4000 to $5000 less per month than it was previously paying in premiums. She stated that this amounted to a savings of approximately 20 percent in Employer-paid premium costs each month.

In any event, Kenny testified, after Graham requested that the implementation date be April 1, she made every effort to insure that the coverage of the Blue Cross Community Blue PPO plan would become effective for the employees of the Employer on April 1. Although, according to Kenny's earlier testimony, such an early implementation date should have been impossible, given all of the lead time necessary, it appears from the testimony of Graham and Ken Hopton that, as of April 1, the Employer's employees were enrolled in the Blue Cross Community Blue PPO plan.

Whatever the reason for establishing the effective date of coverage for April 1, there is undisputed testimony that on March 5, the benefits orientation meeting was conducted at the bowling alley, and that Kenny was the principal speaker. Also present during all or large portions of the meeting were Barbara Stefan; William Revelry; ''Elaine'' (who assisted Revelry); Laurie Hopton; Ken Hopton; and employees of the Employer, Barb Peyerk and Pam Bailey (the latter of whom is the paycheck clerk). Approximately 85 of the 110 employees eligible to enroll attended some portion of the 4-hour orientation meeting. Some of these employees were accompanied by family members. Not only were the employees given an oral presentation, but they also received a substantial number of documents (as embodied in Jt. Exhs. 2–5), some of which they completed and submitted with the assistance of the above-noted persons. Both Peyerk and fellow employee Anthony Becker testified that, as a result of what they learned at this meeting, they believed the Blue Cross plan provided better benefits than did their prior American Medical Securities health insurance plan. Peyerk also testified that she liked the lower deductibles under the Blue Cross plan, which resulted in her having more money.

According to Kenny, although a number of employees did not attend the March 5 meeting, it was nonetheless possible for Vincam and Blue Cross to process their applications (up to 25 of them) in a sufficiently expeditious manner so they could be enrolled in the new health insurance plan on the effective date of April 1. Kenny testified that, except with respect to about five employees, by March 10, the Employer supplied to Vincam the needed enrollment information on all of the employees who did not attend the March 5 meeting. Enrollment information on the remaining five employees was submitted to Vincam until as late as March 15.

There was a considerable amount of testimony by Kenny, Laurie Hopton, Ken Hopton, Barb Peyerk, and Anthony Becker regarding the various additional benefits (such as membership in Walt Disney's Magic Kingdom Club and in the Universal Studios Florida FAN CLUB) offered by Vincam during the benefits orientation meeting on March 5. The Employer maintained a continuing objection to most of this testimony as not being encompassed within the scope of the Petitioner's objections. The Petitioner sought the inclusion of this testimony based on it being inextricably connected with the insurance issue in Objection 1. I find that it really does not matter whether or not this evidence is considered in conjunction with the previously related evidence. It is that previously related evidence which contains the elements necessary for an informed conclusion to be reached regarding whether or not it was objectionable for the Employer to hold the benefits orientation meeting at which employees applied for the new health insurance 2 days before the election was conducted in the instant case.

An important threshold question to consider is whether or not those who conducted the benefits orientation meeting on March 5 were either agents of the Employer or possessed actual or apparent authority to act on behalf of the Employer for purposes of enrolling employees in the new health insurance plan. It has been the long established policy and practice of the National Labor Relations Board to apply the common law principles of agency, which are set forth in the *Restatement 2d of Agency*. *Allegheny Aggregates, Inc*., 311 NLRB 1165 (1993); and *Dentech Corp*., 294 NLRB 924, 926 (1989). This leads to the ''doctrine of apparent authority,'' whereby ''the principal's manifestations to a third party supply a reasonable basis for the third party to believe that the principal has authorized the alleged agent to do the acts in question.'' *Allegheny Aggregates*. There are two conditions which must be satisfied before it is deemed that apparent authority has been created: ''(1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity.'' *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82, 83 (1988).

Aside from anything else, the above-noted February 27 letter by Cecil Konik (Jt. Exh. 1) to the employees of the Employer is conclusive evidence that both ''the Management'' of the Employer and the Vincam representatives meet both of the criteria for having apparent authority to act as agents of the Employer with respect to the changeover in health insurance. Indeed, the following language of Konik's letter is ample evidence of this:

> On Wednesday, March 5, 1997, there will be an Open House given by VINCAM and the Management of Yale Industries to go over the new insurance program. It is imperative that all employees enroll at this time. If you are unable to attend this Open House please make arrangements with our personnel department to enroll as soon as possible as to not interrupt your health care coverage. Our target date for implementation of this new program is April 1, 1997. Please invite your families to attend this open house, as they will be able to ask questions and get answers to their insurance needs. . . .
>
> I am sure that you will enjoy the many improvements and superior coverage of this new insurance program.
>
> I am looking forward to seeing all of you there.

Both of the employees in the appropriate bargaining unit who testified (Barb Peyerk and Anthony Becker) stated they received Konik's February 27 letter and believed that in order to get the better health insurance plan the employees needed to attend the March 5 benefits orientation—which was being conducted by the aforementioned representatives of the Employer and Vincam (as well as Blue Cross).

In *B & D Plastics*, 302 NLRB 245 (1991), the Board reiterated that, in cases where benefits have been granted or announced prior to an election, the standard to be used is an objective one. The Board went on to set forth the standard to be utilized in determining whether, by an employer granting a benefit prior to an election, it would tend unlawfully to influence the outcome of that election. According to the Board, the factors to be examined include:

> (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit.

The Board then went on to recount that:

> In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive. It has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the pending election, for the timing of the grant or announcement of such benefits. Id. [citations omitted].

Using the *B & D Plastics* analysis, I would initially note that the benefit of a new and rapidly implemented health insurance plan was to provide employees with better coverage at lower premium rates with as little time elapsing as possible (less than a month from application to enrollment). Such an improvement in one of the most important benefit areas is, obviously, quite substantial. Indeed, the seriousness with which the Employer treated the changeover in insurance plans is also indicative of the substantiality of the improvement.

Between, approximately, 100 and 110 employees were to be receiving the new and improved insurance. Thus, all of the appropriate bargaining unit in the election in the instant case, with the possible exception of those employees who chose to opt out of this insurance plan, were to be receiving the Blue Cross Community Blue PPO plan. Although ''only'' 85 or so showed up for the benefits orientation meeting, most of the remainder would at least have known that improvements were being made in the provision of employee health insurance.

Although the longer term employees may be accustomed to changes occurring in insurance around March every year or two, given the late notice they received and the extremely close proximity of the benefits orientation meeting to the election as well as the rush to implement the new health insurance plan, the employees reasonably would view the purpose of this benefit as being, at least in part, to influence their vote. The word ''reasonably'' is the key, as it creates an objective standard which does not take into account how individual employees might react to being informed of the improved health insurance 2 days before the election. When a perceived substantial improvement is announced regarding such an important benefit so close to the election and employees are also told that it will be implemented at breakneck speed, it cannot help but, to a significant extent, cause employees to reasonably view the purpose as being to influence their vote.

Although the timing of the benefit—both as to the orientation meeting and the implementation of the new insurance—has already been discussed to some extent, its significance cannot be overemphasized. The timing of the benefit in relation to the election has been deemed by the Board to be the most critical of the four factors. *AK Steel Corp*., 317 NLRB 260 (1995). Quite obviously, in the instant case, the shortage of time between the benefits orientation meeting and the election would leave in the minds of the bargaining unit employees the well-known—and prohibited—message of the ''fist inside the velvet glove.'' *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964). That is, with the election just about to take place, this employer-provided improvement in health insurance would reinforce the notion that the Employer is the indispensable ''source of benefit . . . from which future benefits must flow and which may dry up if it is not obliged.'' Id.

Although the above would seem to lead to the conclusion that the announcement of the improved insurance plan during the critical period is objectionable, the Employer in the instant case still could rebut this inference with a credible explanation of why it was so necessary to hold the benefits orientation meeting just 2 days before the election. I, however, find that the Employer has not met its burden.

Although it is possible that no one involved in scheduling and/or conducting the benefits orientation meeting on March 5 took into account the pendency of the election, the fact is that at least two of these persons occupied important positions in the Employer's hierarchy and were well aware of what was to take place on March 7. Ken Hopton is not only the general manager of administration of the Employer, but also the son of the president of the Employer, William Hopton. Laurie Hopton is not only Ken's wife, but also the office manager. Obviously, had they wished, the Hoptons could have raised objections to holding the meeting in such close proximity to the election. The Employer was certainly not bound to allow its employees to participate in the benefits orientation meeting just 2 days before the election. Yet, according to the testimony of the Hoptons, they raised no such objections since they believed it was the only way to enroll the employees in the new Blue Cross insurance plan by April 1, and there would have been additional costs (both financial and in coverage) to the Employer and the employees had the enrollment been delayed another month longer.

lt is all well and good for the Employer to wish to expeditiously obtain better health insurance coverage for its employees at a lower cost. But with an election looming, the Employer acted at its own peril when, on or about February 25, it acquiesced in the scheduling and conduct of the benefits orientation meeting on March 5. According to Laurie Hopton, the witness who had the most familiarity with the premium costs, the Employer paid $4000 to $5000 more per month for health insurance coverage provided through American Medical Securities than it would be paying for coverage through Blue Cross. Although this is a differential of approximately 20 percent, that still does not amount to such a

significant figure in the scheme of things. The value of the election—to the employees, the Employer, and the Petitioner—is, of course, incalculable. However, I think I can say without fear of contradiction that the actual and intrinsic value of the election must easily dwarf $4000 or $5000. Thus, holding the benefits orientation meeting 2 days before the election was truly an example of being ''penny-wise and pound foolish.''

Had the benefits orientation meeting been conducted during the week of March 10 or 17, it still would have been very possible to have enrolled the employees in the improved health insurance plan by May 1. Of course, a majority vote for the Petitioner in the then-upcoming election would have imposed a bargaining obligation on the Employer. But that would have been in the natural course of things, based on the employees in the bargaining unit selecting the Petitioner as their bargaining representative. And, by that same token, these employees could still, if they preferred the Blue Cross Community Blue PPO plan, make those sentiments known to the Petitioner, which would fail to take them into account at its own peril.

The bottom line, again, is that, by acquiescing to the conduct of the meeting at which the employees applied for the new health insurance on March 5, the Employer presented to the bargaining unit employees the proverbial ''fist inside the velvet glove.'' It makes no difference that the changeover in health insurance and other benefits had been in the works since November or December 1996. The date of March 5 was not scheduled until February 25, almost 2 weeks after the Stipulated Election Agreement was approved by the Regional Director, and which scheduled the election for March 7. Once the election was thus scheduled, it became incumbent on the Employer to act in a prudent manner and to not provide the appearance of influencing employees' votes by unnecessarily holding a benefits meeting which—a mere 2 days before the election—implicitly sent the message that the Employer is ''the source of benefits now conferred . . . which may dry up if it is not obliged.'' *NLRB v. Exchange Parts Co*., supra at 409.

In light of the extremely close proximity to the election of the meeting at which the employees applied for the improved health insurance coverage, it is quite likely that 2 days later, some of the employees were influenced to a significant extent in the casting of their votes. Out of 106 votes cast, the Petitioner needed 11 more ''Yes'' votes from those voters who were not challenged in order to attain a clear majority. In view of what both parties agree is the substantial improvement in health insurance benefits, it is quite conceivable that at least 11 voters were influenced to a significant extent to vote ''No'' by the Employer's ''generosity'' in granting better coverage at a lower cost to them. See, e.g., *Sunrise Rehabilitation Hospital*, 320 NLRB 212, 213 (1995).

Accordingly, based on the above, I recommend that the Petitioner's Objection 1 be sustained.